HONOURABLE SRI JUSTICE J.CHELAMESWAR
And
HONOURABLE SRI JUSTICE D.APPARAO

THURSDAY, THIRTEENTH DAY OF JULY TWO THOUSAND SIX

WRIT PETITION No.14103 of 2006

Between:

M/s. Uma Electronic Corporation,
Vijayawada. .. Petitioner

And

1. Commercial Tax Officer, Vijayawada
and two
others. ..Respondents

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ORDER: (Per Hon'ble Sri JC, J)**:**

Aggrieved by a decision of the third respondent – Joint Commissioner

(CT) Legal, Hyderabad, in rejecting the stay application of the petitioner by his order dated 28-06-2006, the present writ petition is filed.

2. The petitioner is a dealer on the rolls of the 1st respondent-Commercial Tax Officer, Vijayawada, carrying business in electronic goods. For the assessment year 2000-01, the 1st respondent completed the assessment by his order dated 20-08-2001. It appears that on 30-12-2003, there was an inspection on the premises of the petitioner and the Inspecting Officers noticed certain irregularities in the accounts of the petitioner pertaining to the above mentioned assessment year. As a consequence of it, the petitioner's case for the assessment year 2000-01 came to be reassessed by an order 17-09-2005. On completion of the assessment, a show cause notice proposing to impose penalty was also issued to the petitioner on the same day i.e., 17-09-2005. On receipt of the objections of the petitioner, a final order imposing penalty passed on 14-02-2006.

3. Challenging the said order, the petitioner carried the matter in appeal before the 2nd respondent-Appellate Deputy Commissioner (CT), Vijayawada, and the same is still pending. During the pendency of the said appeal, the petitioner also moved an application before the 2nd respondent praying that the recovery of the penalty be stayed, which was rejected. Thereupon, the petitioner carried the matter before the 3rd respondent. The 3rd respondent by his order dated 28-06-2006, dismissed the revision of the petitioner. Hence, the present writ petition.

4. Heard the learned counsel for the petitioner and the learned Government Pleader for Commercial Taxes.

5. There is a time gap of approximately six months between the date of reassessment order and the order of imposing penalty on the petitioner. A Full Bench of this Court laid down the law holding that there must be some reasonable proximity between the date of the reassessment and the order of imposing penalty. The question whether the gap of six months can be classified as reasonable gap making the orders of assessment and imposing of penalty is not to be decided in this case and a matter has to be decided in the appeal pending before the 2nd respondent. Admittedly, the entire amount of tax pursuant to the reassessment is already paid.

6. In the circumstances, we are of the opinion that the matter can be disposed of at this stage directing the respondents not to recover the amount of

penalty pursuant to the decision of the 1st respondent dated 14-02-2006 pending disposal of the appeal before the 2nd respondent.

7. Accordingly, the writ petition is disposed of with the aforementioned direction. No costs.

(J.CHELAMESWAR, J)

(D.APPARAO, J)

July 13, 2006.
Kvr